

## **REMARKS**

### **Summary**

Claims 1, 2, 6, 7, 9-22 and 25-36 stand in this application. Claims 2-5, 8, 23 and 24 were previously canceled without prejudice. Claims 35 and 36 were previously withdrawn. Claims 1, 21, 26, 30 and 32 have been amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has amended claims 1, 21, 26, 30 and 32 in order to facilitate prosecution on the merits.

### **35 U.S.C. § 102**

At page 2, paragraph 3 of the Office Action claims 1, 2, 6, 7, 9-15, 17-22, 25, 26, 28-32 and 34 stand rejected under 35 U.S.C. § 102 as being anticipated by United States Patent Number (USPN) 7,016,296 to Hartman ("Hartman"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the anticipation rejection.

Applicant respectfully submits that to anticipate a claim under 35 U.S.C. § 102, the cited reference must teach every element of the claim. *See* MPEP § 2131, for example. Applicant submits that Hartman fails to teach each and every element recited in claims 1, 2, 6, 7, 9-15, 17-22, 25, 26, 28-32 and 34 and thus they define over Hartman. For example, with respect to claim 1, Hartman fails to teach, among other things, the following language:

sending a medium reservation reply message from said access point granting a medium reservation request and providing training feedback describing at least one measured transmission condition measured on a per antenna basis using each antenna where multiple antenna are used at said access point....

According to the Office Action, this language is disclosed by Hartman at column 11, line 9 to column 12, line 53. Applicant respectfully disagrees.

Applicant respectfully submits that claim 1 defines over Hartman. Hartman, arguably, teaches adaptive modulation for fixed wireless links that enable subscribers to share a channel to transmit using different modulation schemes. The scheme in Hartman is determined based on measurements of the quality of signals received from a subscriber at a WATS. The WATS in Hartman determines the optimal encoding scheme and symbol constellation for the transmission of signals on a channel based on the data received from the subscriber and then instructs the subscriber to change encoding scheme and/or symbol constellation to the optimal encoding scheme and symbol constellation based on the determination. Applicant respectfully submits that this is different than the above recited language of claim 1.

Applicant respectfully submits that he has been unable to locate any teaching in Hartman directed to “sending a medium reservation reply message from said access point granting a medium reservation request and providing training feedback describing at least one measured transmission condition measured on a per antenna basis using each antenna where multiple antenna are used at said access point....” Applicant respectfully submits that the information sent from the WATS to the subscriber in Hartman fails to describe “at least one measured transmission condition measured on a per antenna basis using

each antenna where multiple antenna are used at said access point” as recited in claim 1. Consequently, Hartman fails to disclose all the elements or features of the claimed subject matter. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claim 1. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 2, 6, 7, 9-15 and 17-20, which depend from claim 1 and, therefore, contain additional features that further distinguish these claims from Hartman.

Claims 21, 26, 30 and 32 have been amended to recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 21, 26, 30 and 32 are not anticipated and are patentable over Hartman for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the anticipation rejection with respect to claims 21, 26, 30 and 32. Furthermore, Applicant respectfully requests withdrawal of the anticipation rejection with respect to claims 22, 25, 28, 29, 31 and 34 that depend from claims 21, 26, 30 and 32 respectively, and therefore contain additional features that further distinguish these claims from Hartman.

**35 U.S.C. § 103**

At page 13, paragraph 5 of the Office Action claims 16, 27 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hartman in view of US 2004/0214582 to Lan et al. (“Lan”). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

Applicant respectfully submits, as recited above, that Hartman fails to disclose each and every element recited in amendment independent claims 1, 21, 26, 30 and 32. Applicant respectfully submits that Lan also fails to teach, suggest or disclose the missing language. Moreover, Applicant respectfully submits that claims 16, 27 and 33 depend from independent claims 1, 26 and 32 respectively. Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to dependent claims 16, 27 and 33 is respectfully requested at least on the basis of their dependency from claims 1, 26, and 32. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

For at least the reasons given above, claims 16, 27 and 33 are non-obvious and represent patentable subject matter in view of the cited references. Accordingly, removal of the obviousness rejection with respect to claims 16, 27 and 33 is respectfully requested. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims

that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1, 2, 6, 7, 9-22 and 25-36 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to deposit account 50-4238.

Respectfully submitted,

KACVINSKY LLC

/John F. Kacvinsky/

John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

Dated: October 31, 2007

KACVINSKY LLC  
C/O Intellevate  
P.O. Box 52050  
Minneapolis, MN 55402  
(724) 933-5529